CIB 1552/95196

BR. P. M. D.

Submitted with reference to the letter No.S.619E, dated the 9th October 1952, from the R.O.(I & S), Bombay 2. The Rationing Officer (Iron and Steel), Bombay states that the Police have filed a case against Shri Doshi for breach of condition in the permit issued by the Dy. Iron and Steel Rationing Officer, Bombay in the Presidency Magistrate's XX Court, Mazgaon, During the prosecution, the defence counsel questioned the authorit of the Dy. Iron and Steel Rationing Officer, Bombay, to issue permits. It may be seen from the Iron and Steel Controller's letter dt. 22/23rd December 1947 that the Dy. Iron and Steel Rationing Officer was authorised by him to issue permits, on his behalf to the consumers to acquire iron and steel materials from the Reg. Stockholders and Registered Stockholders to supply materials against permits issued. The R.O.(I&S further states that in view of clause 2(a) of the iron and Steel (Control of production and Distribtion) Order, 1941, the authorisation of the iron and steel Controller is not valid, as such authorisation can only be granted by the Central Govt. The R.O.'s view appears to be correct. The R.O. states that in view of this, if the court pases judgment as at 'A' on page 4/c.s., all such cases pending trials will result in the discharge of the accused persons and his office will not be in a position to file such cases in future, with the result that gross misuse of iron and steel in all such cases will go unpunished on account of the legal technicality. The R.O., therefore, proposes to withdraw the case against shri J.L.Doshi.

3....

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3. It seems that even if the present case is withdrawn there is no guarantee that defence will not challenge the validity of permits in similar cases. However, it appears that the judgment pointing out the defect in the permit would affect similar other pending cases adversely, if filed. In view of this, it is for orders whether the R.O.(I&S) Bombay, should be advised to withdraw the present case.

4. Incidentally, it may be stated that the case is coming for hearing on 13-10-52. It is stated by the R.O.(I&S) that this case was discussed by him with Secretary.

Id.

The case may be withdrawn.

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Office of the R. L. A.

This case was discussed by the R.L.A. with the Provincial Rationing Officer, Iron and Steel, Captain Mullan, and later on with Shri D'Souza, the Police Prosecutor, who is conducting this case in the Presidency Magistrate's Court and Shri Parikh who is the Legal Adviser to the Provincial Rationing Officer, Iron and Steel.

2. On scrutiny of the exhibits put up in the case by the Legal Adviser and the Police Prosecutor, it is found that on the application made by Shri Doshi for the C.G.I. sheets the Provincial Rationing Officer himself has stated that the municipal licence and a copy of the building permit should be called for. When the municipal licence and the building permit were received under a letter, on the back of that letter the office of the Provincial Rationing Officer has put up a note saying that, as the two things which were required to be produced have been received, the quota asked for by him may be released. The authorisation for the P.I. & S.C.C. under clause 2(a) for the purposes of clauses 4 and 5 was issued by the Central Government on the 29th November 1948 and the permit itself was issued on 30th December 1948. The permit was signed by the Deputy for the Controller. It can, therefore, be argued that in terms of the authorisation, the actual decision to grant the permit was taken by the Controller; that although this decision may have been taken prior to the authorisation it was unnecessary to submit the papers to him again since the decision had already been taken on merits, and that the Deputy in signing for the Controller was

AB 14/6

merely performing a formal ministerial act, and that it was part of the Deputy's main duty to sign such permits on behalf of the Controller. For this purpose it would be necessary to examine the Deputy Iron and Steel Rationing Officer, whom these facts may be got elicited.

3. Instructions on these lines were given to the Police Prosecutor who is in charge of the case and also to the officers of the Department who had attended the conference.

4. In these circumstances, it is necessary to withdraw the case.

5. As regards the withdrawal of other pending cases, each case will have to be decided on its own facts. Wherever it is possible to show that the deicision was taken by the Controller who had been regularly authorised by the Central Government although the permit may have been actually signed by the Deputy for the Controller, the cases should not be withdrawn. If, however, the papers were never submitted to the Controller and the Deputy himself took the decision and also signed the permit, it would be difficult to defend such cases for the period in which the Deputy himself was not authorised by the Central Government.

Sd/-

Remembrancer of Legal Affairs.

U.R. to P.W.D.No.1087/9-Confl., dated the 17th October 1952.

hss.13/6

G BR.

CIS 1552/98874
P. W. D.

Submitted with reference to office note dt. the 10/10/52 and Secretary's note below it.

Please see the R.L.A.'s opinion No.1087G-Confl, dated the 17th October 1952. In view of what is stated in para 2 of the u.o.r. dt. 17/10/52, the R.L.A. states that it is unnecessary to withdraw the case. In view of this, the R.O.(I&S) Bombay may be asked not to withdraw the case against Shri J.K.Doshi. A copy of the R.L.A.'s opinion dt. 17/10/52 may also be forwarded to the R.O.(I&S),Bombay for information and guidance. A draft letter is put up for approval.

Id.

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AS 14/6.

CIS 1552/121998
P. N. D.

2 BE.

Submitted.

2. Copy of the judgment in respect of prosecution of Shri J.H.Doshi, Bombay for misuse of iron and steel is submitted for approval. The accused was acquited by the Presidency Magistrate, 20th Court, Mazgaon. From the text of the judgment it appears that there is no ground for appeal In view of this the R.O.(I&S), Bombay may be informed that Govt. does not propose to appeal against the judgment of the Presidency magistrate, 20th Court, Mazgaon and that the case papers should be recorded. A draft letter is put up for approval.

Id.

It seems from the judgment that the case failed on facts, in other words the proposals made perfunctory &

incorrect reports. In future, before sanctioning any prosecution, the Controller should himself visit the site and check up on facts, so as to save waste of time, money and energy. Inspector in question should be warned in this case.

Id./-

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CIS 15-2/121998

Q ER. P. D.

Resubmitted.

2. In view of Secretary's note dated 2/1/53 the draft letter at page 21 of c/s is put up for approval

Id/-

No. ISC/CON/1/501/BOM/937
Ministry of Industry & Supply(India)
Iron and Steel Control,
100, Netaji Subhas Road,
Calcutta, the 22nd/ 3rd Dec.1947.

From

The Iron and Steel Controller,

To

The Deputy Iron and Steel Rationing Officer,
Bombay.

GENERAL AUTHORISATION.

In exercise of the powers conferred on me under clauses 4 and 5 of the Iron and Steel (Control of Production and Distribution) Order, 1941, I hereby authorise you to issue permits, on my behalf, to the Consumers to acquire iron and steel materials from the Registered Stockholders and the registered stockholders to supply materials against permits issued by you.

Sd/- M.M.POWAL
IRON AND STEEL CONTROLLER.

Copy to:-

1. B. Dutt Roy, Esq., for information
2. Mr. S.K.Lahiri, "
3. Mr. N.D.Bafatary, Provincial Iron & Steel licensing Authority, Bombay, for information.
4. Regional Deputy Iron and Steel Controller, Bombay.

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CONFIDENTIAL

EXPRESS.

No. 5619-E
Office of the
Rationing Officer (Iron and Steel),
Military Hutments, Esplanade Maidan, Fort,
Bombay No.1, 9th October 1952.

To

The Secretary to the Government of Bombay,
Public Works Department.

Subject:- Prosecution of Shri J.H.Doshi of Bombay for misuse of iron and steel released under permits.

A permit was issued to Shri J.H.Doshi of Bombay on 29-12-48 for 1 ton of C.G.I.Sheets by this office for roofing the garage at Sitladevi Temple Road, Mahim, in accordance with the plans approved by this office and on the terms and conditions stated in the permit. It was, however, noticed that Shri J.H.Doshi had not carried out the construction work as per the plans approved by this office and also he used part of the constructed work as a godown. This amounted to a breach of the conditions of the permit and because an offence punishable under clause 8 of the Iron and Steel (Control of Production and Distribution) Order, 1941 read with section 7 of the Essential supplies (Temporary Powers) Act, 1946. It was, therefore, decided to prosecute him and the case was sent to Police for necessary action after due investigation. The Police have filed a case against Shri Doshi in the Presidency Magistrate's Court, Mazgaon, Bombay. The permit in this case was issued under the signature of Shri S.A.Shah, the Dy. Iron and Steel Rationing Officer on behalf of the Provincial Iron and Steel Rationing Officer. This was being done in accordance with the authorisation issued by the Iron and Steel Controller, Calcutta vide his letter NOL ISC/CDN/1/501/BOM/937 dated the 22nd/23rd Dec.1947. (copy enclosed).

During the hearing of the case the defence counsel

questioned the authority of the Provincial Iron and Steel rationing Officer for issue of permits under clause 4 of the Iron and Steel (Controlof Production and Distribution) Order, 1941 and when the necessary notification was shown to him, he enquired whether Mr.Shah was Provincial Iron and Steel Rationing Officer and if not whether he has been so authorised and if so he demanded the production of the requisite document, to which the Court agreed and adjourned the case to 13th October 1952. This office has to produce the necessary document on that day.

Clause 2(a) of the Iron and Steel (Control of Production and ~~Control~~ Distribution) Order, 1941 defines "Controller" referred to in that Order as under:-

"Controller" means the persons appointed as Iron and Steel Controller by the Central Government and includes any person exercising, upon authorisation by the Central Government, all or any of the powers of the Iron and Steel Controller. It is evident ~~from~~ from this definition that the power of appointing any person to exercise all or any of the powers of the Iron and Steel Controller vests in the Central Government only and none else. The authorisation issued by the Iron and Steel Controller, Calcutta in favour of the Dy.Iron and Steel Rationing Officer of this office is, therefore, not a valid authorisation and when this fact was noticed by me after I assumed charge last year, the Govt. of India were aprised of the position and they were pleased to issue the necessary authorisation in favour of the Dy. Iron and Steel Rationing Officer in October 1951.

As in the present case the permit has been signed by the Dy. Iron and Steel Rationing Officer who wasnot so authorised by the Govt. of India in 1948, the Court may hold a view that the permit issued by this office, not being a valid permit, the accused is not bound to comply with the terms and conditions of such a permit and may discharge the accused. If the Court possess such a judgment, the fact that all permits issued by this Office before authorisation by the Central Government are in-valid permits and the permit holders are not

are not bound to comply with the terms and conditions thereofwill be known to all. All such cases which are pending trials in the different courts will, therefore, result in the discharge of accused persons; not it will be possible for this office to file any fresh cases where the parties concerned have misused or unauthorisedly disposed of the material acquired against permits. The result will be that gross misuse of iron and steel in all such cases will go unpunished on account of a legal technicality. Such a situation is not considered desirable in the interest of Government and therefore ~~xx~~ it is proposed that the case against shri J.H.Doshi may be withdrawn.

As the hearing is on 13th October 1952, it is requested that suitable orders may please be issued immediately so as to reach this office, if possible, on or before that date. The case was discussed by the undersigned with the Secretary on 9th October 1952.

Sd/-
Rationing Officer(Iron and Steel).

Encl. 1.

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CONFIDENTIAL. LETTER.

L1552/

NO. CIS/95156-B

Public Works Department,
Bombay Castle (Bombay No.1),
~~8th January 1953.~~
23rd Oct. 1952.

To

The Rationing Officer (Iron and Steel),
Bombay.

Subject:- Prosecution of Shri J.H.Doshi of Bombay for misuse of iron and steel released under permit.

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Reference: Your letter No.5619E, dated the 9th October 1952.

2. I am directed to request you not to withdraw the case filed against Shri J.H.Doshi in the Presidency magistrate's XX Court, Mazgaon, for misuse of iron and steel released to Shri Doshi. In this connection I am ~~dir~~ directed to enclose a copy of the U.O.N. NO.1087/G-Confl., dated the 17th October 1952, from the D.L.A. for information and guidance.

By order and in the name of the Governor of Bombay

Asstt. Secy. to the Govt. of Bombay
Public Works Department.

D.A.
i) u.o.r. ~~refined~~ referred to

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LETTER.

CONFIDENTIAL.
NO. CIS 1552

Public Works Department.
Bombay Castle (Bombay no.1),
8th January 1953.

To

The Rationing Officer (Iron & STeel),
Bombay.

Subject:- Prosecution of Shri J.H. Doshi of Bombay for misuse of iron and steel released under permit.

Reference: Your letter No.B[illegible]/LA-404/6457E, dated the 11th December 1952.

2. I am directed to state that on perusal of the judgment of the Presidency Magistrate, 20th Court, Mazgaon, in the above case it appears that the case filed on basis of facts; in other words the inspector made perfunctory and incorrect reports. I am to state that in future, before sanctioning any prosecution, you should yourself visit the site and check up on facts, so as to save waste of time, money and energy The Inspector in question who made incorrect reports. should be warned in this particular case.

D.A. Nil.

By order and in the name of the Governor of Bombay

Sd/-
Assistant Secretary to the Government of Bombay, Public Works Department.

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